

AMENDED IN SENATE APRIL 22, 2003

AMENDED IN SENATE MARCH 26, 2003

**SENATE BILL**

**No. 873**

**Introduced by Senator McPherson**

February 21, 2003

---

---

An act to amend Section 11105.3 of the Penal Code, and to amend Section 828 of, and to repeal Sections 204 and 725.1 of, the Welfare and Institutions Code, relating to criminal history.

LEGISLATIVE COUNSEL'S DIGEST

SB 873, as amended, McPherson. Criminal history information.

(1) Existing law provides that agencies responsible for determining the character and fitness of a person applying for employment, a license, or a volunteer position, within a human services field in which he or she would have supervisory or disciplinary power over members of vulnerable populations, including children, the elderly, or the mentally impaired, may request, and the Department of Justice shall provide, the criminal history information of those applicants or volunteers, as specified, with respect to certain enumerated offenses.

This bill would provide that in that connection, requests for federal level criminal record information received by the department would be forwarded to the Federal Bureau of Investigation by the department to be searched for any record of arrests or convictions.

(2) Existing law prohibits the Department of Justice from knowingly transmitting information relating to the arrest or the taking into custody of a minor at the time of the arrest or the taking into custody unless the information also includes the resulting disposition. Existing law also requires the juvenile court to report to the Department of

Justice the complete criminal history of any minor found to be a person adjudged a ward of the court because of the commission of a specified felony offense. Existing law requires the Department of Justice to retain this information and make it available pursuant to provisions governing the California Criminal Index and Identification System.

This bill would repeal those provisions.

(3) Existing law provides that any information gathered by a law enforcement agency relating to the taking of a minor into custody may be disclosed to another law enforcement agency or to any person or agency with a legitimate need for the information for purposes of official disposition of a case.

This bill would revise that provision to specifically include information gathered by the Department of Justice.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11105.3 of the Penal Code is amended  
2 to read:

3 11105.3. (a) Notwithstanding any other law, a human  
4 resource agency or an employer may request from the Department  
5 of Justice records of all convictions or any arrest pending  
6 adjudication involving the offenses specified in subdivision (a) of  
7 Section 15660 of the Welfare and Institutions Code of a person  
8 who applies for a license, employment, or volunteer position, in  
9 which he or she would have supervisory or disciplinary power over  
10 a minor or any person under his or her care. The department shall  
11 furnish the information to the requesting employer and shall also  
12 send a copy of the information to the applicant.

13 (b) Any request for records under subdivision (a) shall include  
14 the applicant's fingerprints, which may be taken by the requester,  
15 and any other data specified by the department. The request shall  
16 be on a form approved by the department, and the department may  
17 charge a fee to be paid by the employer, human resource agency,  
18 or applicant for the actual cost of processing the request. However,  
19 no fee shall be charged to a nonprofit organization. Requests  
20 received by the department for federal level criminal offender  
21 record information shall be forwarded to the Federal Bureau of  
22 Investigation by the department to be searched for any record of



1 arrests or convictions. *The provisions of Section 50.12 of Title 28*  
2 *of the Code of Federal Regulations are to be followed in*  
3 *processing federal criminal history information.*

4 (c) (1) Where a request pursuant to this section reveals that a  
5 prospective employee or volunteer has been convicted of a  
6 violation or attempted violation of Section 220, 261.5, 262, 273a,  
7 273d, or 273.5, or any sex offense listed in Section 290, except for  
8 the offense specified in subdivision (d) of Section 243.4, and  
9 where the agency or employer hires the prospective employee or  
10 volunteer, the agency or employer shall notify the parents or  
11 guardians of any minor who will be supervised or disciplined by  
12 the employee or volunteer. A conviction for a violation or  
13 attempted violation of an offense committed outside the State of  
14 California shall be included in this notice if the offense would have  
15 been a crime specified in this subdivision if committed in  
16 California. The notice shall be given to the parents or guardians  
17 with whom the child resides, and shall be given at least 10 days  
18 prior to the day that the employee or volunteer begins his or her  
19 duties or tasks. Notwithstanding any other provision of law, any  
20 person who conveys or receives information in good faith and in  
21 conformity with this section is exempt from prosecution under  
22 Section 11142 or 11143 for that conveying or receiving of  
23 information. Notwithstanding subdivision (d), the notification  
24 requirements of this subdivision shall apply as an additional  
25 requirement of any other provision of law requiring criminal  
26 record access or dissemination of criminal history information.

27 (2) The notification requirement pursuant to paragraph (1)  
28 shall not apply to a misdemeanor conviction for violating Section  
29 261.5 or to a conviction for violating Section 262 or 273.5.  
30 Nothing in this paragraph shall preclude an employer from  
31 requesting records of convictions for violating Section 261.5, 262,  
32 or 273.5 from the Department of Justice pursuant to this section.

33 (d) Nothing in this section supersedes any law requiring  
34 criminal record access or dissemination of criminal history  
35 information. In any conflict with another statute, dissemination of  
36 criminal history information shall be pursuant to the mandatory  
37 statute. This subdivision applies to, but is not limited to,  
38 requirements pursuant to Article 1 (commencing with Section  
39 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section  
40 1569) and Chapter 3.4 (commencing with Section 1596.70) of,

1 Division 2 of, and Section 1522 of, the Health and Safety Code,  
2 and Sections 8712, 8811, and 8908 of the Family Code.

3 (e) The department may adopt regulations to implement the  
4 provisions of this section as necessary.

5 (f) As used in this section, “employer” means any nonprofit  
6 corporation or other organization specified by the Attorney  
7 General which employs or uses the services of volunteers in  
8 positions in which the volunteer or employee has supervisory or  
9 disciplinary power over a child or children.

10 (g) As used in this section, “human resource agency” means a  
11 public or private entity, excluding any agency responsible for  
12 licensing of facilities pursuant to the California Community Care  
13 Facilities Act (Chapter 3 (commencing with Section 1500)), the  
14 California Residential Care Facilities for the Elderly Act (Chapter  
15 3.2 (commencing with Section 1569)), Chapter 3.01  
16 (commencing with Section 1568.01), and the California Child  
17 Day Care Facilities Act (Chapter 3.4 (commencing with Section  
18 1596.70)) of Division 2 of the Health and Safety Code, responsible  
19 for determining the character and fitness of a person who is:

20 (1) Applying for a license, employment, or as a volunteer  
21 within the human services field that involves the care and security  
22 of children, the elderly, the handicapped, or the mentally impaired.

23 (2) Applying to be a volunteer who transports individuals  
24 impaired by drugs or alcohol.

25 (3) Applying to adopt a child or to be a foster parent.

26 (h) Except as provided in subdivision (c), any criminal history  
27 information obtained pursuant to this section is confidential and no  
28 recipient shall disclose its contents other than for the purpose for  
29 which it was acquired.

30 SEC. 2. Section 204 of the Welfare and Institutions Code is  
31 repealed.

32 SEC. 3. Section 725.1 of the Welfare and Institutions Code is  
33 repealed.

34 SEC. 4. Section 828 of the Welfare and Institutions Code is  
35 amended to read:

36 828. (a) Except as provided in Sections 389, 781, and 827.9  
37 of this code or Section 1203.45 of the Penal Code, any information  
38 gathered by a law enforcement agency, including the Department  
39 of Justice, relating to the taking of a minor into custody may be  
40 disclosed to another law enforcement agency, including a school



1 district police or security department, or to any person or agency  
2 which has a legitimate need for the information for purposes of  
3 official disposition of a case. When the disposition of a taking into  
4 custody is available, it shall be included with any information  
5 disclosed.

6 A court shall consider any information relating to the taking of  
7 a minor into custody, if the information is not contained in a record  
8 which has been sealed, for purposes of determining whether  
9 adjudications of commission of crimes as a juvenile warrant a  
10 finding that there are circumstances in aggravation pursuant to  
11 Section 1170 of the Penal Code or to deny probation.

12 (b) When a law enforcement agency has been notified pursuant  
13 to Section 1155 that a minor has escaped from a secure detention  
14 facility, the law enforcement agency shall release the name of, and  
15 any descriptive information about, the minor to a person who  
16 specifically requests this information. The law enforcement  
17 agency may release the information on the minor without a request  
18 to do so if it finds that release of the information would be  
19 necessary to assist in recapturing the minor or that it would be  
20 necessary to protect the public from substantial physical harm.

